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PATENT

#15
1/21/2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Madison
Appl. No. : 09/694,667
Filed : October 23, 2000
For : Frame Construction For Eyewear
Having Removable Auxiliary Lenses
Examiner : H. Dang

) Group Art Unit: 2873

) I hereby certify that this correspondence and all
) marked attachments are being deposited with the
) United States Postal Service as first-class mail in
) an envelope addressed to: Assistant
) Commissioner for Patents, P.O. Box 2327,
) Arlington, VA 22202, on

December 30, 2002

(Date)

Robert J. Roby, Reg. No. 44,304

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TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A PRIOR PATENT

RECEIVED

Assistant Commissioner for Patents
P.O. Box 2327
Arlington, VA 22202

JAN 21 2003

**OFFICE OF THE SPECIAL
PROGRAMS EXAMINER**

Dear Sir:

The owner, Aspex Eyewear Group, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,149,269. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and each of the prior patents are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of either of the prior patents, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate

1. ☐ For submission on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.) the undersigned is empowered to act on behalf of the organization.

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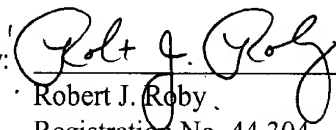
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


2. ☒ The undersigned is an attorney or agent of record.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 30, 2002

By: 
Robert J. Roby
Registration No. 44,304
Attorney of Record
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404

RENEE PRESTON 
PARALEGAL SPECIALIST
TECHNOLOGY CENTER 200

- ☒ Terminal disclaimer fee under 37 C.F.R. 1.20(d) included.
☒ PTO suggested wording for terminal disclaimer was
☒ unchanged. ☐ changed (if changed, an explanation should be supplied).

Certification under 37 C.F.R. 3.73(b) is required if terminal disclaimer is signed by the assignee.

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T.D. INFORMAL MEMO: DO NOT MAIL THIS MEMO TO APPLICANT

DATE: 21-Jan-03APPL. S.N.: 09/694,667TO: EXAMINER Dang, Hung XuanART UNIT: 2873FROM: Preston, Renee

PARALEGAL SPECIALIST

RETURN THIS MEMO TO: CP4-6D34SUBJECT: Decision on Terminal Disclaimer (T.D.) filed: 06-Jan-03

INSTRUCTIONS: I have reviewed the submitted T.D. with the results as set forth below. If you agree, please use the appropriate form paragraphs identified by this informal memo in your next Office action to notify applicant of the T.D. If you disagree or have any questions, please see me or the Special Program Examiner. THIS IS AN INFORMAL, INTERNAL MEMO ONLY. IT MUST NOT BE (1) MAILED TO APPLICANT OR (2) PLACED OF RECORD IN THE APPLICATION FILE. When your action is complete, please initial, date and return this memo to me. THANK YOU.

- ☒ The T.D. is PROPER and has been recorded (see ¶ 14.23).
- ☐ The T.D. is NOT PROPER and has not been accepted for the reason(s) checked below (see ¶ 14.24):
- ☐ The TD fee of has not been submitted nor is there any authorization in the application file for the use of a deposit account (see ¶ 14.26.07).
 - ☐ The T.D. does not satisfy Rule 321 in that the person who has signed the T.D. has not stated the extent of his/her interest (and/or the extent of the interest of the business entity represented by the signature) in the application/patent (see ¶¶ 14.26 & 14.26.01).
 - ☐ The T.D. lacks the enforceable only during common ownership clause – needed to overcome a non-statutory double patenting rejection, Rule 321(b) (see ¶ 14.27.01).
 - ☐ The T.D. is directed to a particular claim(s), which is not acceptable since “the disclaimer must be for a terminal portion of the term of the entire patent to be granted” (MPEP 1490) (see ¶¶ 14.26 & 14.26.02).
 - ☐ The person who signed the T.D.:
 - ☐ is not an attorney “of record” (see ¶¶ 14.29 and 14.29.01).
 - ☐ has failed to state his/her capacity to sign for the business entity (see ¶ 14.28).
 - ☐ is not recognized as an officer of the assignee (see ¶¶ 14.29 & possible 14.29.02).
 - ☐ No documentary evidence of a chain of title from the original inventor(s) to assignee has been submitted, nor is the reel and frame number specified as to where such evidence is recorded in the Office (see 37 CFR 3.73(b) and 1140 O.G. 72). NOTE: This documentary evidence or the specifying of the reel and frame number may be found in the T.D. or in a separate paper of record in the application (see ¶ 14.30).
 - ☐ The T.D. is not signed (see ¶¶ 14.26 & 14.26.03).
 - ☐ The serial number of the application (or the number of the patent) which forms the basis for the double patenting rejection is missing or incorrect (see ¶ 14.32).
 - ☐ The serial number of this application (or the number of the patent in reexam or reissue cases being disclaimed is missing or incorrect (see ¶¶ 14.26, 14.27.02 or 14.26.05).
 - ☐ The period disclaimed is incorrect or not specified (see ¶¶ 14.26, 14.27.02 or 14.26.03).
 - ☐ Other:
 - ☐ Suggestion to request refund (see ¶ 14.36). NOTE: If already authorized, credit refund to deposit account and do not check this item.

I have appropriately notified applicant(s) of the status of the Terminal Disclaimer filed in this case.

Ex. Initials: _____ Date: _____

Log Date: _____